

# UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

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In Re Applications of: )  
READING BROADCASTING, INC. )

For Renewal of License of )  
Station WTVE-TV, Channel 51 )  
Reading, Pennsylvania )

and )

ADAMS COMMUNICATIONS CORPORATION )

For Construction Permit for a new )  
Television Station to Operate on )  
Channel 51, Reading, Pennsylvania )

MM Docket No. 99-153

File No.:  
BRCT-940407KF

File No.:  
BPCT-940630KG

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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	)	MM Docket No. 99-153
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	)	BPCT-940630KG
For Construction Permit for a new	)	
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Channel 51, Reading, Pennsylvania	)	

Room TW-A363  
Federal Communications  
Commission  
445 12th Street, N.W.  
Washington, D.C. 20005

Thursday,  
May 25, 2000

The parties met, pursuant to the Notice of the  
Court, at 2:00 p.m.

BEFORE: HON. RICHARD L. SIPPEL  
Administrative Law Judge

APPEARANCES:

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P R O C E E D I N G S

(2:00 p.m.)

THE COURT: Okay. We're on the record. I appreciate everybody coming down on such short notice. I know Mr. Shook is not here. But I understood that he was going to be away this week, anyway.

And since this is primarily a discovery issue between Reading and Telemundo, I don't see -- and in light of how Mr. Shook wants to handle his participation in the discovery of this case, I have no problem with moving forward.

Again, it was on short notice for two reasons. One, we have a hearing date starting on June 12th. And I don't want to spend any time during the process of the hearing in terms of taking up discovery issues, at least not any extensive discovery issues.

And secondly, I do understand that there's a long weekend coming ahead of us. And if anybody had plans for Monday or next Tuesday, I wanted to anticipate that, also, although I'm going to be available tomorrow if there's need to file for any further action on this.

Now, let me take appearances first. On behalf of Reading?

MR. HUTTON: Thomas Hutton.

THE COURT: And on behalf of Adams?

1 MR. BECHTEL: Gene Bechtel.

2 THE COURT: And on behalf of Telemundo?

3 MR. HAYS: Michael Hays, Your Honor.

4 THE COURT: Mr. Hutton, thank you very much. You  
5 were very prompt and very thorough in terms of responding to  
6 what you just received yesterday from them.

7 MR. HUTTON: Thank you, Your Honor.

8 THE COURT: You do know that Ms. Swanson either  
9 has been or will be served with a subpoena ad testificandum  
10 of this case.

11 MR. HUTTON: I guess I didn't know that. She had  
12 been served with a -- one for a deposition and that was  
13 withdrawn. So I wasn't aware that she would be subject to  
14 any further subpoena.

15 THE COURT: Okay.

16 MR. HAYS: We are asking her to appear for  
17 examination on this issue at the hearing. And I can confirm  
18 with you later about serving the subpoena on her.

19 MR. HUTTON: Well, I think we'll have to take a  
20 look at it, Your Honor. But we may very well oppose that  
21 on, basically, some of the same grounds that we've addressed  
22 here.

23 THE COURT: I wasn't putting it to you for that  
24 purpose.

25 MR. HUTTON: Right.

1           THE COURT: I just, simply, I feel that I have an  
2 obligation to let you know exactly what the state of affairs  
3 -- the current state of affairs are vis-a-vis Ms. Swanson  
4 and Telemundo. I signed the subpoena just a few days ago.  
5 And I'm assuming that service would be effected on it.

6           And I, obviously, signed it because I felt that  
7 her testimony would be relevant. But that's not a  
8 determination if you have something else in mind. You know,  
9 believe me, we've got a tight schedule here. I can  
10 appreciate what you've done in terms of refining or seeking  
11 to refine a fairly broad request.

12           But the situation, with respect to Telemundo,  
13 seems to me to be very -- from the standpoint of discovery,  
14 standpoint of testimony, from the standpoint of time,  
15 effort, and energy in this seems to me very focused.

16           Adams is a one-time group that's put together for  
17 a very specific purpose. They are acting in that capacity  
18 now, and it was in that context through the testimony of Mr.  
19 Gilbert that we learned that there had been contacts with  
20 Telemundo about an appraisal. Now --

21           MR. HAYS: I'd be happy to address these issues,  
22 Your Honor, whenever you want.

23           THE COURT: Well, I'm going to ask you. But I'm  
24 just trying to set the stage here. All is being sought, as  
25 far as I'm concerned, are documents which might be relevant

1 -- which would be relevant, not which might be, but which  
2 would be relevant to any context that Ms. Swanson had with  
3 Mr. Gilbert or any of the attorneys for Adams, which would  
4 be Mr. Bechtel and Mr. Cole.

5 That should not be a -- I would not think that  
6 that would be a very wide universe of documents. And then,  
7 what I received in your brief this morning -- and you did  
8 indicate this earlier, also -- that there's a district court  
9 case up in Pennsylvania between -- and Telemundo and sued  
10 the Reading Group.

11 MR. HAYS: Yes, Your Honor. Yes, Your Honor.  
12 That's correct.

13 THE COURT: And there's been a lot of discovery up  
14 there.

15 MR. HAYS: It's ongoing, as I understand it. I  
16 know very little about that case, but there is discovery  
17 ongoing.

18 THE COURT: Well, you have a footnote in your  
19 opposition this morning. It's exactly your response  
20 pleading that you got in at 12 o'clock today that there are  
21 documents that have turned over in that case, documents on  
22 your footnote one, with respect to Adams.

23 MR. HAYS: Yes, Your Honor.

24 THE COURT: And are these -- what is there -- what  
25 is that case about? What's the nature of that case?

1           MR. HAYS: You know, Your Honor, I know very  
2 little. I'm hesitant to almost say anything about it,  
3 because I know so little about it. Mr. Hutton may know more  
4 about it than I. I believe -- well, I really shouldn't  
5 speak, because I don't know much about that case.

6           I have seen, obviously, the document request which  
7 I've quoted in our papers. But I'm not familiar enough with  
8 the case to know that there is a claim by Telemundo, I  
9 believe, against Reading for tortuous interference, if I am  
10 not mistaken. But I really don't know anything about the  
11 case. Do you, Tom?

12          MR. HUTTON: I do. Well, I know a little more  
13 about it. I'm not involved in the case at all.

14          MR. HAYS: Neither am I, Your Honor.

15          MR. HUTTON: It has to do with the termination of  
16 the affiliation agreement that Reading had with Telemundo.  
17 Reading changed its programming last fall from Telemundo  
18 programming to a different type of programming. And  
19 Telemundo filed suit against Reading in connection with the  
20 termination of the affiliation agreement.

21          THE COURT: All right. So, then, how does that  
22 tie into discovery there? The documents, apparently, have  
23 been produced. Who have these been produced by? These are  
24 documents --

25          MR. HAYS: These documents were produced, Your



1 Honor. And as I said in my papers, we've produced some of  
2 them already, again, for the second time to Mr. Hutton and  
3 will produce the remainder of them to Mr. Hutton tomorrow.  
4 So it's not really an issue. But the discovery in that case  
5 has been produced to Reading.

6 There's a letter. And let me just give it to you,  
7 a copy to Your Honor and to the other parties here, if I may  
8 approach the bench.

9 THE COURT: Please, yes, sir. Thank you.

10 MR. HAYS: This is a copy of a letter, Your Honor,  
11 that counsel for Telemundo, Mr. Pittinsky, sent to counsel  
12 for Reading indicating that the documents were available for  
13 inspection and copying. And that was on May 16th. And it  
14 was telecopied to them.

15 So these documents -- and you can see from the  
16 quotations that we have that they are document production.  
17 These documents are -- essentially, their document requests  
18 were much broader in that Federal District Court case than  
19 had been in the FCC proceeding. But nonetheless, they  
20 include the documents that were sought here.

21 In May, I made these documents available and, in  
22 fact, made a courtesy copy of them and sent some of them to  
23 Mr. Hutton, several hundred pages. And I have them right  
24 here.

25 In addition, Your Honor, as I indicated in my

1 papers, in an effort to make every reasonable compliance,  
2 we're going to send the rest of those documents, some 2800  
3 pages total, to Mr. Hutton by Federal Express. And he shall  
4 receive them tomorrow.

5 So at that point, we will have produced all of the  
6 documents to Mr. Hutton that have been produced in that  
7 other lawsuit. So he will have all of those documents. In  
8 addition, we produced a privilege log here which we've  
9 prepared and submitted with Your Honor, as Your Honor  
10 directed.

11 THE COURT: Now, excuse me just a minute. Was  
12 that privilege log in connection with the case up in  
13 Pennsylvania or was that --

14 MR. HAYS: No. It was -- it had many of the same  
15 documents on it. But it's different in several respects.  
16 It does not include privilege documents that are not  
17 relevant to the subpoena are not included. And moreover,  
18 there are several items that we have added to it, which are  
19 at the end of the privilege log which reflect the documents  
20 that are in dispute here today.

21 THE COURT: So this is a custom design for this  
22 case?

23 MR. HAYS: Yes. Yes, to that extent.

24 THE COURT: Okay. I just wanted to get that  
25 clarification.

1           MR. HAYS: Yes. Now, Your Honor, what's really in  
2   dispute here at this point, I believe, are residual  
3   categories, what I would call very, very marginal documents  
4   that are incredibly burdensome for us to locate and to  
5   review and to redact and to produce. And we've produced, as  
6   I say, all the other documents, thousands, and will by  
7   tomorrow have produced thousands of pages of documents.

8           What's in dispute now is Telemundo -- excuse me --  
9   is Reading's continued insistence on a few categories of  
10  documents, phone bills, Ms. Swanson's combined personal and  
11  professional calendar, and Ms. Swanson's presumptively  
12  privileged notes, and billing records. And that's what  
13  we're really disputing.

14          The dispute here is today that we've produced  
15  everything else, including as I say several thousands of, or  
16  will by tomorrow, have produced several thousands of pages  
17  of documents. So that's all that's in dispute here. And I  
18  would submit to Your Honor that in balancing the burden on  
19  non-party Telemundo over the relevance of these documents  
20  that the Court should order us to comply further by  
21  producing those documents.

22          And if I may, Your Honor, I'd like to address  
23  those issues just very briefly. On the burden side, first,  
24  the phone records. I have no idea how we would review and  
25  obtain and review these documents. Telemundo has offices in

1 California, New York, and Florida. It has counsel in  
2 Philadelphia and in Washington, D.C. There's no time frame  
3 that is set forth in the subpoena, no time frame whatsoever.

4 THE COURT: I picked that up. That's a good  
5 point.

6 MR. HAYS: I have no idea how many pages, but I'm  
7 sure there are hundreds, if not thousands, of pages of phone  
8 records. I have no idea how we'd obtain them, how we would  
9 obtain them, whether or not we've still not seen them or  
10 not. And all of these phone records, to the extent that it  
11 was conversations between Ms. Swanson and counsel for Adams,  
12 Mr. Cole, those are local telephone calls.

13 They wouldn't show up, anyway. And, at most, they  
14 would indicate that there was a telephone conversation which  
15 could have been on any number of topics. I mean, Ms.  
16 Swanson and Mr. Cole have other dealings, as well, I'm sure.  
17 And so it wouldn't demonstrate anything in that regard. So  
18 I would submit that that's an incredible burden to impose on  
19 us.

20 Second of all, there are reams of notes that Ms.  
21 Swanson keeps, generalized notes that she keeps. And she  
22 would have to review all those notes. There are hundreds of  
23 pages of those notes. There's no time limit, again, in the  
24 subpoena set forth. And those are the kinds of things that  
25 are presumptively privileged.

1           Those are attorney's work product notes that they  
2     make of conversations with the client or reflecting their  
3     internal deliberations and thought processes. And we have  
4     produced all these other documents. We submit, Your Honor,  
5     she should not be compelled to go back and dig through those  
6     old notes to try to find some reference to Mr. Cole or Mr.  
7     Gilbert.

8           THE COURT: Is there anything similar to that done  
9     in the Reading District Court case?

10          MR. HAYS: Not that I'm aware of, Your Honor.

11          THE COURT: It might be too early, because that  
12     case was just filed. Well, it's got a '99 date on the --

13          MR. HAYS: Yes, it does have a '99 date, Your  
14     Honor. But I'm not -- I don't believe that that -- Ms.  
15     Swanson has not undertaken that review for that case. But  
16     third of all is her calendar, her personal calendar, which  
17     combines both personal items such as medical appointments,  
18     engagements, social engagements, notes about her family,  
19     along with her business records.

20          Again, there's no time frame in her subpoena.  
21     Even if it were limited from April of 1999, she'd have to go  
22     through hundreds, you know. There's a page for each day, so  
23     there's obviously 300 pages of notes that she'd have to go  
24     through, review, try to determine what it was about, and  
25     then try to redact them.

1           And then, finally there are the billing records,  
2    which again, I have no idea how many entries that there  
3    might be. And that also is presumptively privileged, as  
4    well. And I think it's uncommon --

5           THE COURT: Well, billing records are not  
6    privileged.

7           MR. HAYS: Well, it depends on the inserts on what  
8    was performed, what the lawyer performed reflects  
9    conversations on certain topics with the --

10          THE COURT: Subject matter, no, it's not  
11   privileged. I mean the subject matter, even if the  
12   conversation is privileged, the subject matter of the  
13   conversation is not privileged.

14          MR. HAYS: Well --

15          THE COURT: I mean, I'm confident of that. But, I  
16   mean -- I don't mean to interrupt you, because I'm more  
17   concerned about the burden right now.

18          MR. HAYS: All right. Well we would -- in any  
19   event, Your Honor, it's the burdensome of going through  
20   those potentially -- I mean, again, even since April of  
21   1999, there have been at least 30 working days. And Ms.  
22   Swanson works an awful lot of weekends, as well. And I  
23   would submit, Your Honor, Ms. Swanson has a very, very busy  
24   schedule.

25          We have produced on very short notice -- we got

1 the subpoena on May 10th. We have produced on very short  
2 notice, or will be producing by tomorrow, several thousands  
3 of pages of documents. Telemundo is a non-party. And we  
4 submit that in balancing that burden against the relevance  
5 of these documents that the Court should not order us to  
6 further respond.

7 The relevance of these documents is something that  
8 I think is de minimis, as best. I mean, the relevance of  
9 these documents to establish what Adams or documents about  
10 the appraisal which occurred in April of 1999 to show Adams'  
11 intent with respect to a 1994, as I understand it, filing,  
12 overfiling, has got to be so attenuated here when compared  
13 to the burden that this kind of thing would impose, these  
14 phone records from multiple cities and these hundreds, if  
15 not thousands, of pages of notes and entries in her personal  
16 calendar that we submit that Your Honor should deny any  
17 further motion to compel with this.

18 We've really made a good-faith and, I think,  
19 diligent effort to make every reasonable compliance on very  
20 short notice. But this really is, considering the relevance  
21 of these documents, this is really, I think, outside the  
22 pail.

23 I would also indicate, Your Honor, that if Reading  
24 believes that these documents are so critical to its case  
25 that it's willing to impose this kind of burden on

1 Telemundo, which I think, again, telephone records in this  
2 context and billing records and those sorts of things I  
3 think are an extraordinary request in this context, then  
4 they should have to pay for it.

5 Your Honor should condition any order requiring us  
6 to make these searches and to find these documents and to  
7 redact them, then to submit them and copy them, it should  
8 impose those costs on Reading. If Reading believes that it  
9 is so critical to their case, then they should be willing to  
10 pay for it.

11 THE COURT: Okay. Let me ask you this: Why is  
12 the -- when these documents, to the extent that you know,  
13 you can answer this -- but to the extent that these  
14 documents were produced by Telemundo in the District Court  
15 case, you've got them flagged in here as relating to Adams  
16 communication. Were those documents segregated in some way?  
17 I mean, are these --

18 MR. HAYS: No, Your Honor. They were just  
19 produced on confident -- although I haven't asked local  
20 counsel this, according to the Federal Rules of Civil  
21 Procedure, which allows you to produce them in accordance  
22 with the way in which they were filed, and that's typically  
23 the way people produce documents.

24 THE COURT: So it would be chronologically or --

25 MR. HAYS: Well, it would be according to files.



1 I don't know how Telemundo keeps its files. But,  
2 presumably, if they were produced -- and I'm speculating  
3 here, Your Honor -- if they were produced in accordance with  
4 the way they were kept by the -- Telemundo, they would have  
5 been produced in files.

6 THE COURT: I hear you. But there was enough --  
7 Telemundo had enough -- I'm just curious that they would be  
8 asking for specific information about Adams. Well, okay.

9 MR. HAYS: I don't know what the relevance of that  
10 request in that case was. Maybe, Mr. Hutton does. I don't  
11 know.

12 THE COURT: Well, I'm just trying to think this  
13 through in terms of what might be readily available. I  
14 mean, is there a file someplace sitting around that says,  
15 you know, Adams communications?

16 MR. HAYS: To the extent that there is a file,  
17 Your Honor, we've produced it or will be producing it  
18 tomorrow. So that will have already been done. We're only  
19 talking now about the residual category of very marginal  
20 documents, such as phone records and billing records and Ms.  
21 Swanson's personal calendar. That's what we're talking  
22 about.

23 If there's a file that says Telemundo on it, we've  
24 produced it. It says Adams on it or the appraisal, we've  
25 produced those. We've produced, or will be producing, 2,800

1 pages. So to the extent there is anything like that,  
2 they've got it.

3 THE COURT: And what would be the burden on -- I'm  
4 paraphrasing now -- but Mr. Gilbert testified that he did  
5 have some conversations with Ms. Swanson. And what would be  
6 -- and where would it be so burdensome for her or for her to  
7 have someone go through that time frame which is, you know  
8 -- you say it's in '99 sometime?

9 MR. HAYS: Well, it depends on the time frame,  
10 Your Honor. I mean, the subpoena -- there was no time frame  
11 set forth in the subpoena. So this is, in essence, the  
12 first we've heard about a particular -- about a particular  
13 time frame. With respect to her personal calendar, if we  
14 had, say, you know a couple-of-week period that she would  
15 have to look through, I would agree with Your Honor that  
16 that, if it were limited to a couple of weeks, that would  
17 not be an extraordinary burden, although, I still submit the  
18 relevance of that is pretty de minimis.

19 But on the other -- with respect to the notes, I  
20 don't believe that she files those notes, necessarily, in  
21 chronological order. And it wouldn't -- to review all of  
22 these notes and to pour through all those things might be  
23 considerably more burdensome. So I think it depends.

24 THE COURT: I was going to ask that, too. That's  
25 not a chronological diary that she keeps?

1           MR. HAYS: No, Your Honor. It's, basically, a pad  
2 like this. And she takes notes, as most lawyers do, and  
3 then she tears them off and puts them in various files.

4           THE COURT: So would it be -- does she have a file  
5 for Adams communications?

6           MR. HAYS: If we do have a file for Adams  
7 communications, it would be produced -- she had a separate  
8 file for Adams communications. It would be produced in  
9 conjunction with this.

10          THE COURT: But then that would cover her personal  
11 notes, unless there's a privilege issue.

12          MR. HAYS: Yes. My understanding is that her  
13 personal notes were included, you know, in -- that were  
14 identifiable as relating to a specific client were put in  
15 the specific client's file.

16          THE COURT: Excuse me. I didn't mean to interrupt  
17 you. That's already been done.

18          MR. HAYS: Yes. To that extent, yes, Your Honor.

19          THE COURT: Well, how much more could she do?

20          MR. HAYS: Well, she may have other notes. I  
21 mean, she's got -- she has these loose-leaf files that may  
22 have references to one or more clients. And my  
23 understanding is that they are not segregated according to  
24 date or necessarily by client and so that there might be a  
25 volume of these things that she would have to go through to

1 look and see if there were any references.

2 THE COURT: But you have reasonable assurance that  
3 there has been a calling of her files and that, to the  
4 extent that she kept Adams communications or communications  
5 with Mr. Gilbert or even communications with Mr. Cole  
6 vis-a-vis this particular venture, that there has been a  
7 delineation of those documents? They are segregated in some  
8 way?

9 MR. HAYS: If they were put in the client's files,  
10 that's correct, yes.

11 THE COURT: I'm assuming that.

12 MR. HAYS: But there may be, as I say, there may  
13 be a category of those documents that were just never filed  
14 that she just keeps in a folder someplace that weren't  
15 transmitted to the client's files.

16 THE COURT: Well how big -- if we're talking about  
17 from, let's say, from mid-1999 up until the present, I mean,  
18 how much -- first of all, how much trouble would it cause --  
19 would it take to locate those -- that particular file or  
20 filing system? And then secondly, how long would it take to  
21 flip through those pages?

22 MR. HAYS: Again, Your Honor, I don't know whether  
23 she files them chronologically. I'm just not certain as to  
24 that issue.

25 THE COURT: I mean, this is not just a great big

1 blob of papers someplace, is it?

2 MR. HAYS: My understanding is that she has  
3 loose-leaf files. And she tears them off. They are not  
4 necessarily segregated according to client and that I'm not  
5 certain whether she keeps them in chronological order or  
6 not. I'm sorry, Your Honor. I can't answer that question.

7 THE COURT: Well, if it's really a legitimate  
8 issue of burdensomeness, a lot of reasons as to why I'm very  
9 keen in terms of the equities there. We're not going to  
10 have these things -- this information is not going to be  
11 used in the traditional way of a deposition where there's  
12 going to be questions asked from all directions, and then  
13 people are going to go back and sift through this and decide  
14 what, if any, is going to be used in the hearing.

15 This is going to be taken right at the hearing.  
16 So I'm going to look at this information very carefully, the  
17 documents very carefully. This is all going to be -- it's  
18 not -- we're really not into discovery relevance on this,  
19 Mr. Hutton. You know, we're in a hybrid, but this is not  
20 traditional discovery. This is preparation for the hearing.

21 And as I said up front, I said it's hard for me to  
22 think that there's all that much written material on this,  
23 except for maybe the appraisal. I mean, if there's been  
24 work up on the appraisal, that's --

25 MR. HAYS: But if there's work up on the

1 appraisal, that would have been produced. And I don't think  
2 we would have -- I doubt if there's -- well, it depends.  
3 Some of it may be contained in the privilege log. But we've  
4 either produced it or it's in the privilege log.

5 THE COURT: All right. Well, now, what's going to  
6 be produced tomorrow? Is that also going to have a  
7 privilege log in connection with that?

8 MR. HAYS: The privilege log that we've submitted  
9 to Your Honor and to Mr. Hutton contains the privileged  
10 documents for both the production that we've already made to  
11 Mr. Hutton and the documents that will be introduced  
12 tomorrow.

13 THE COURT: Tomorrow?

14 MR. HAYS: Tomorrow, yes.

15 THE COURT: And have you had a chance -- I'm going  
16 to ask Mr. Hutton. You can make your points, but I want to  
17 ask a question or two. Have you had a chance to look at the  
18 first wave of these documents that have come in?

19 MR. HUTTON: I have. And that's what prompted my  
20 motion to the objection --

21 MR. HAYS: Your Honor?

22 MR. HUTTON: -- my objection to their objection,  
23 because I didn't feel that it was totally responsive. And  
24 basically, what they've produced to us were a copy of the  
25 appraisal and some correspondence relating to the appraisal.

1 And that was a very small part of that production. The  
2 balance of the production was merely copies of pleadings  
3 from this case and orders by you in this case which  
4 obviously I had already seen.

5 MR. HUTTON: They are not going to interest you?

6 MR. HUTTON: No. And likewise, I don't think the  
7 production of the Philadelphia documents is going to  
8 interest me, particularly. I think the material that  
9 remains to be seen, combined with the material from which a  
10 privilege is claimed, is going to be much more meaningful to  
11 me.

12 And I indicated to Mr. Hays on the phone that  
13 since the appraisal process seemed to have started in April  
14 of 1999 that I'm willing to limit the time frame to April of  
15 1999 forward.

16 THE COURT: To when?

17 MR. HUTTON: Well, through 1999. I don't think  
18 there was anything going on in 2000.

19 THE COURT: Well, you might want to drop back. I  
20 mean, the process started in April of '99?

21 MR. HUTTON: Yes.

22 THE COURT: You might want to drop back a month or  
23 so. There might have been some conversations preceding it.

24 MR. HUTTON: Okay. So March of '99.

25 THE COURT: March of '99 through when, December

1 31?

2 MR. HUTTON: Well, let me take a look at the  
3 privilege log.

4 THE COURT: While you're looking at that, what  
5 about Mr. Hays' offer that Reading pay the expenses of  
6 sifting through these materials?

7 MR. HUTTON: I don't think you have the authority  
8 to order that. And, certainly, Austin wasn't paid for their  
9 involvement in this case. Mr. Kravetz wasn't paid for his  
10 involvement. I just don't see the authority for that.

11 MR. HAYS: Well I submit, Your Honor, that you do  
12 have the authority to condition it. I mean, you're not  
13 ordering them to do something and then, in addition,  
14 ordering them to pay the expenses. You're merely  
15 conditioning their right to receive certain documents.

16 And as I quoted, Your Honor, a provision from the  
17 Federal Rules of Civil Procedure, Recording 5, which clearly  
18 authorizes Federal District Court judge to minimize the  
19 expense and inconvenience on non-party witnesses, I think  
20 that's a pretty well-established principle.

21 MR. HUTTON: In Federal District Court?

22 MR. HAYS: Well, I think that --

23 MR. HUTTON: We're under the FCC's rules.

24 THE COURT: Just a second. One at a time. One at  
25 a time. Don't --



1 MR. HUTTON: I'm sorry.

2 THE COURT: Go ahead, Mr. Hays.

3 MR. HAYS: I was going to say, if -- that I think  
4 this Court has inherent authority to manage and to ensure  
5 fairness to non-parties. And why should a non-party --  
6 we've already borne, I can tell Your Honor, substantial  
7 expense and substantial inconvenience and time going through  
8 these documents, responding to these discovery requests, and  
9 making these things of production.

10 We didn't ask Your Honor to order it ab initio.  
11 What we're saying now, though, we've already gone a couple  
12 of miles here. If it's so important to Reading that they  
13 get this, what I believe is very marginal stuff that  
14 remains, they ought to have to pay for it. If it's not  
15 important enough for them to pay for it, then why is it so  
16 important that we have to pay for it?

17 THE COURT: Aside from the fact that you don't  
18 think that I can do --

19 MR. HUTTON: We're operating under the FCC's rules  
20 here, not under the Federal Rules of Civil Procedure. And  
21 I'm not aware of any case where an administrative law judge  
22 of the FCC has required such a condition. And as I  
23 indicated, Sidley and Austin was in the same position. They  
24 were put to probably -- I would easily say that they were  
25 put to more trouble and expense, because they had to go

1 through their records of several years.

2 They produced a high volume of material. And they  
3 had to defend the depositions of two of their lawyers or  
4 former lawyers. You know, I just think it's unreasonable to  
5 impose that on us when it's unilateral like that.

6 THE COURT: All right. Yes, go ahead, Mr. Hays.

7 MR. HAYS: I was just going to say, I mean, it's  
8 unreasonable to impose it on him? He's the party that's  
9 seeking it. I mean, if it's unreasonable to impose it on  
10 him, it's doubly unreasonable to impose it on us. I mean,  
11 we're a non-party that has nothing to do with this case.

12 THE COURT: Well, discovery is never a pleasant  
13 task. And it's doubly unpleasant for non-parties. I'm  
14 aware of that. But I don't really want to get too far down  
15 that road as to what I can or can't do.

16 I know that I have -- I don't know whether it was  
17 in response to an order or whether it was just persuasion.  
18 But, I mean, I've been in a situation where witnesses -- I'm  
19 sorry -- an expert witness question came up and one party  
20 wanted discovery of the other experts.

21 And in a situation like that under the Federal  
22 Rules, you'd have to pay for somebody -- you want to use  
23 somebody else's expert, you have to pay. But I don't know  
24 -- this is -- this just, to me, doesn't come up to the --  
25 and I appreciate very much what Telemundo and what has been

1 done to cooperate thus far because -- anyway, I really do  
2 appreciate that, because there has, so far, so good, there  
3 has not been any delay in terms of this case going forward.  
4 And I'm determined that there not be one.

5           However, with respect to what we're really talking  
6 about here, the only -- I don't think it's that much of a  
7 burden. And I'll tell you why. Well, first of all if we  
8 limit it in terms of the time frame and we're talking about  
9 1 March till -- did you come up with a date at the other  
10 end?

11           MR. HUTTON: I would say the privilege log shows  
12 the last correspondence on this matter in September, the end  
13 of September of 1999. So I would go through the following  
14 month to the end of October.

15           THE COURT: So you're talking about 1 March to the  
16 end of October or the beginning of October?

17           MR. HUTTON: The end of October.

18           THE COURT: That's 31 days -- 31 in October?

19           MR. HUTTON: Thirty-one.

20           THE COURT: You're right. All right. Now that's  
21 not, to me, that's not an extremely long time frame. With  
22 respect to going through a calendar, I've gone through my  
23 calendars many of times, not recently, but I have. And it  
24 doesn't take too long if you're really focused. And I think  
25 Ms. Swanson can be focused, certainly, on this.

1           It's either Adams -- it's anything to do with  
2   Adams or anything to do Mr. Gilbert or anything to do with  
3   Mr. Cole or Mr. Bechtel, but I do understand that might  
4   throw a little bit of confusion into it, since there are  
5   other things that she deals with Mr. Cole on. But, you  
6   know, we would ask her to just sift through that one.

7           MR. HAYS: All right.

8           THE COURT: So that should not be a very  
9   burdensome thing.

10          MR. HAYS: All right. So as I understand what  
11   Your Honor is directing us to do is for the period from  
12   March 1, 1999, through October 31, 1999, to search for a  
13   calendar with respect to anything to do with Adams, Gilbert,  
14   Cole, or Bechtel.

15          THE COURT: Right, or this particular appraisal.

16          MR. HAYS: Or the appraisal.

17          THE COURT: Why don't you read those categories  
18   off again, because I want to get them down.

19          MR. HAYS: All right.

20          THE COURT: Appraisal.

21          MR. HAYS: It would be appraisal, Adams, Gilbert,  
22   Cole, and Bechtel.

23          MR. HUTTON: Or I would add any settlement  
24   discussions or negotiations.

25          MR. HAYS: Well, wouldn't that involve Adams? I

1 mean, I'm just trying to make it -- it's got 10 categories.

2 THE COURT: Yes. I think this is a fair -- you're  
3 starting to get into -- I mean, you're taking it one step  
4 further into things that are going to be very judgmental.  
5 I'm looking for objective -- an objective standard that is  
6 not going to be excessively burdensome and was going to  
7 permit Ms. Swanson to make a pretty fast cut on what she has  
8 or doesn't have. The questions on settlement you're going  
9 to have to ask for yourself. And, I mean, you've already  
10 asked for information on settlement of Adams, haven't you?

11 MR. HUTTON: Yes.

12 THE COURT: All right. Now, telephone records and  
13 you say that these -- they would probably be local but,  
14 again, the same thing for the telephone records. Again,  
15 that should not be -- well, let me ask you --

16 MR. HAYS: Well, Your Honor, I think the telephone  
17 records are probably the most burdensome thing of all.

18 THE COURT: Well, explain that to me.

19 MR. HAYS: Well, because there are records in  
20 California, New York, Florida, Washington, D.C. I mean, if  
21 you're talking about, you know, Dow, Lohnes, and Albertson's  
22 telephone records, I mean, I don't know -- I don't even know  
23 how we keep our telephone records, frankly. But there are,  
24 obviously, thousands of telephone calls that are made every  
25 day. And Ms. Swanson makes thousands of telephone calls

1 every day.

2 I don't even know how we would go about doing that  
3 of any kind. And all that would show -- let's suppose that  
4 Mr. Cole's number came up. Well, first of all, Mr. Cole's  
5 number would never come up, because it's a local call.

6 THE COURT: Well, limit it to Mr. Gilbert.

7 MR. HAYS: I don't know if we can -- if our  
8 telephone records permit us to search in that fashion. I  
9 just don't know.

10 THE COURT: And it would just be the Washington --  
11 out of the Washington office. I mean --

12 MR. HAYS: I can check for Your Honor.

13 THE COURT: This is where she spends, virtually,  
14 all her time, isn't it, when she has to conduct business  
15 somewhere.

16 MR. HAYS: That's correct.

17 MR. HUTTON: If I can make a suggestion, with  
18 respect to the multiple Telemundo offices, I don't think we  
19 need to review all that. I would just suggest that a review  
20 be made for calls made from the extensions of the people  
21 named in the privilege log and the search be restricted to  
22 any phone calls made to Mr. Gilbert by any of those people.  
23 And that seems fairly straightforward.

24 MR. HAYS: I have no idea whether this is  
25 possible, Your Honor. But I can tell you that to try to

1 find -- unless you can do this, get the phone company to do  
2 this or the computer system somehow can do this, this is an  
3 impossible task.

4 THE COURT: Well, if it's an impossible -- if it  
5 is as you describe it, then we're not going to do it.  
6 Obviously, we're not going to do the impossible or the  
7 burdensome. If it's just a question of taking Mr. Gilbert's  
8 telephone number and somehow or other running it through the  
9 computer for the office and seeing when it pops up, in the  
10 Washington office I'm talking about --

11 MR. HAYS: All right. So, then, that might not be  
12 that difficult to do. So we're looking at calls from Dow,  
13 Lohnes, and Albertson to -- and when you say, Tom, the  
14 extension numbers, I don't know if we record the calls that  
15 way, anyway. But who are you talking about there?

16 MR. HUTTON: Ann or Kevin Reed.

17 MR. HAYS: Ann or Kevin. To Mr. Gilbert's  
18 telephone number, do you have -- do you know what that  
19 number is?

20 MR. HUTTON: I can let you know what it is.

21 MR. HAYS: All right. During the same period of  
22 time, Your Honor?

23 THE COURT: During the same period of time. And  
24 if there's any record of any calls coming into that  
25 telephone number.

1           MR. HAYS: I don't think it would be, because we  
2     don't get billed for that. All right. I can check, Your  
3     Honor. I can check, Your Honor. I just have no idea  
4     whether that's feasible or not.

5           THE COURT: If it's not feasible then, you know,  
6     let us know because, as I say, I don't want to be in a  
7     situation where we can break out thousands of pages of  
8     records and have somebody there sifting through them. If  
9     this can't be done with some kind of a computerized search  
10    or some kind of an automated search --

11          MR. HAYS: And they may have had other -- you  
12    know, there may have been other business with Mr. Gilbert,  
13    you know, that wouldn't necessarily be relevant to --

14          THE COURT: Well, that would be interesting to  
15    know that. But I don't know. I don't know. I, as I said,  
16    I don't want to focus too much beyond what we're focusing  
17    on.

18          MR. HAYS: All right.

19          MR. HUTTON: Your Honor, from the Telemundo files,  
20    it looks like Ann Gaulke and Cary Meadow are the two persons  
21    that were particularly involved in this matter for  
22    Telemundo. So to the extent we could get phone records of  
23    -- from those people, that would be very useful.

24          THE COURT: Well, those would be presumably --  
25    those would be presumably privileged, though; right?